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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

MAXIMILIAN KLEIN, et al.,

Plaintiffs,

vs.

META PLATFORMS, INC.,

Defendant.

This Document Relates To: All Actions

Consolidated Case No. 3:20-cv-08570-JD

**HAGENS BERMAN AND  
LOCKRIDGE'S RESPONSE TO  
"CONSUMER PLAINTIFFS" MOTION  
FOR ADMINISTRATIVE RELIEF  
PURSUANT TO N.D. CAL. CIVIL L.R.  
7-11 REGARDING SUBSTITUTION OF  
INTERIM CO-LEAD CONSUMER  
CLASS COUNSEL**

The Hon. James Donato

1 Hagens Berman Sobol Shapiro LLP (Hagens Berman) and Lockridge Grindal Nauen P.L.L.P.  
2 (Lockridge) file this response to Consumer Plaintiffs’ Motion for Administrative Relief Pursuant to  
3 N.D. Cal. Civil L.R. 7-11 Regarding Substitution of Interim Co-Lead Consumer Class Counsel (ECF  
4 No. 381). Hagens Berman and Lockridge object that the request was improperly filed as an  
5 administrative motion. If the Court is inclined to grant the motion, Hagens Berman and Lockridge  
6 request that the order is additionally modified to add Brian D. Clark of Lockridge as an additional  
7 co-lead counsel for the consumer class.

### 8 I. RELEVANT PROCEDURAL HISTORY

9 These cases were originally filed on December 3, 2020. Hagens Berman and Lockridge  
10 moved to be appointed co-lead counsel. (ECF No. 59). Quinn Emanuel Urquhart & Sullivan, LLP  
11 (Quinn Emanuel) moved to be appointed co-lead counsel with Keller Lenkner LLC (Keller Lenkner)  
12 (ECF No. 60). With competing leadership applications before her on March 18, 2021, Judge Koh  
13 appointed co-lead counsel for each of the advertiser and consumer classes, creating her own slate of  
14 counsel. For the consumer class (relevant here), Judge Koh appointed Stephen A. Swedlow of Quinn  
15 Emanuel and Shana E. Scarlett of Hagens Berman as co-lead counsel (ECF No. 73 (Leadership  
16 Order)). Judge Koh also appointed Warren Postman of Keller Lenkner and Brian D. Clark of  
17 Lockridge to serve on Plaintiffs’ Executive Committee for the consumer class. *Id.* at 2. The  
18 Leadership Order required Mr. Swedlow and Ms. Scarlett, as interim class counsel, to “review all  
19 billing records for all billers every month and strike duplicative or inefficient billing for the  
20 consumer class” and included a number of other billing guidelines. *Id.*

21 On May 7, 2021, Defendant Facebook, Inc. (Facebook) moved to disqualify Keller Lenkner  
22 from the executive committee for the consumer class (ECF No. 93). On the eve of the hearing on  
23 Facebook’s motion to dismiss, Judge Koh granted the motion to disqualify Keller Lenkner in a  
24 summary order (ECF No. 123). Judge Koh later issued a more fulsome order explaining the rationale  
25 for the disqualification on July 20, 2021 (ECF No. 127). This left Mr. Swedlow and Ms. Scarlett as  
26 named interim co-lead counsel and Mr. Clark as the sole named member of the executive committee  
27

1 for the consumer class. Mr. Swedlow, Ms. Scarlett and Mr. Clark, along with their firms, have  
 2 functioned as essentially three co-lead firms since July 2021.

### 3 **I. PROCEDURAL OBJECTIONS TO THE FILING** 4 **OF THE ADMINISTRATIVE MOTION**

5 *First*, Hagens Berman and Lockridge object to the matter being filed pursuant to Northern  
 6 District of California Civil Local Rule 7-11, which is reserved for “miscellaneous administrative  
 7 matters, not otherwise governed by a federal statute, Federal Rule, local rule, or standing order of the  
 8 assigned judge.” Civil L.R. 7-11. The appointment of class counsel in this action is governed by  
 9 Federal Rule of Civil Procedure 23(g) and should be examined in that context. Moreover, Quinn  
 10 Emanuel was aware that Hagens Berman and Lockridge requested additional modifications to the  
 11 leadership order, compounding the procedural impropriety of its filing. Specifically, Hagens Berman  
 12 and Lockridge informed Quinn Emanuel of their objections, and thereafter, the three firms conferred  
 13 on November 17, 2022. At that time, Hagens Berman and Lockridge requested additional discussions  
 14 regarding these issues.

15 *Second*, the motion is styled on behalf of “Consumer Plaintiffs.” Quinn Emanuel did not have  
 16 the approval of all named plaintiffs for the requested substitution of lead counsel.

17 Quinn Emanuel filed their administrative motion on November 23, 2022 – the evening before  
 18 the Thanksgiving holiday – over the other firms’ objection and request for additional discussions.

### 19 **II. HAGENS BERMAN AND LOCKRIDGE’S OBJECTION AND REQUEST FOR** 20 **ADDITIONAL MODIFICATION TO THE LEADERSHIP ORDER**

21 Hagens Berman and Lockridge object to the modification of the leadership structure to  
 22 substitute Kevin Teruya of Quinn Emanuel for Stephen Swedlow in the absence of an additional  
 23 modification to elevate Lockridge as an equal co-lead counsel.

24 After the removal of Keller Lenkner in this case, the three firms have essentially operated as  
 25 three co-lead firms. Lockridge has devoted substantial time and expertise to this matter, including  
 26 taking lead on many discovery and expert issues. Brian Clark and the other attorneys at Lockridge  
 27 have substantial experience in complex class actions and the issues in this case. For example, Brian  
 28 Clark led the homegrown investigations and resulting litigation on behalf of the country’s direct

1 chicken purchasers and peanut farmers, to date recovering over \$280 million for the classes. *In re*  
 2 *Broiler Chicken Antitrust Litig.*, No. 1:16-cv-08637 (N.D. Ill.); *In re Peanut Farmers Antitrust*  
 3 *Litigation*, No. 2:19-cv-00463 (E.D. Va.).<sup>1</sup> Rebecca Peterson, a partner at Lockridge, has been  
 4 awarded leadership in *In Re Plum Baby Food Litigation*, No. 4:21-cv-00913 (N.D. Cal.) (Co-Lead  
 5 Counsel), *In re Nurture Baby Food Litigation*, No. 1:21-cv-01217 (S.D.N.Y.) (Co-Lead Counsel),  
 6 and *In re Crops Input Antitrust Litigation*, No. 4:21-md-02993 (E.D. Mo.) (Co-Lead Counsel) and  
 7 has particular expertise regarding materiality as it relates to consumers such is at issue in this case.  
 8 *See Zeiger et al. v. WellPet LLC et al.*, No. 3:17-cv-04056 (N.D. Cal.) (Class Counsel). Their  
 9 contribution to this case and benefit to the class cannot be denied.

10 Moreover, complying with the Leadership Order, Lockridge has circulated its time entries on  
 11 a monthly basis for review. Ms. Scarlett has audited Lockridge's timesheets (and those of Hagens  
 12 Berman) on a monthly basis, as required by Judge Koh's Leadership Order (ECF No. 73 at 2)  
 13 (requiring Mr. Swedlow and Ms. Scarlett to "review ***all billing records for all billers every month***  
 14 and strike duplicative or inefficient billing for the consumer class." (emphasis added)). To date,  
 15 Lockridge and Hagens Berman have incurred over \$2 million in fees. Hagens Berman and Lockridge  
 16 are unaware of Quinn Emanuel's lodestar to date, as they have declined to circulate detailed billing  
 17 records on a regular basis to their co-lead counsel. Given the complexity of this action, and the  
 18 expertise of the attorneys at Lockridge, Hagens Berman believes it is in the best interests of this class  
 19 that Lockridge be elevated to the role of co-lead counsel.

20 Finally, the leadership structure has not been without its challenges. Quinn Emanuel is a large  
 21 defense firm of over 900 attorneys.<sup>2</sup> It is not voluntarily litigating with Hagens Berman as its co-lead  
 22 counsel, nor with Lockridge on the executive committee. Ms. Scarlett is one of the few women  
 23 appointed as lead in a complex antitrust case. Mr. Teruya of Quinn Emanuel and Ms. Scarlett of  
 24

25 <sup>1</sup> See [https://www.antitrustinstitute.org/aai-congratulates-the-antitrust-enforcement-awards-2021-](https://www.antitrustinstitute.org/aai-congratulates-the-antitrust-enforcement-awards-2021-honorees/)  
 26 [honorees/](https://www.antitrustinstitute.org/aai-congratulates-the-antitrust-enforcement-awards-2021-honorees/) (noting Mr. Clark and his team in the *Peanut Farmer Antitrust Litigation* received the  
 27 American Antitrust Institute's 2021 Outstanding Antitrust Litigation Achievement in Private Law  
 Practice).

28 <sup>2</sup> <https://www.quinnemanuel.com/>, last visited Nov. 27, 2022.

Hagens Berman were both recently recognized as Top Antitrust Lawyers 2022 in the Daily Journal for the State of California. On that list of 25 antitrust lawyers, only 7 (28 percent) were women.<sup>3</sup> Although finding equality in the law is a complicated topic, promoting men who can respect the voices of female counsel is one place to start.

### III. CONCLUSION

Hagens Berman and Lockridge respectfully request that the Court amend the leadership structure for the consumer class to appoint Brian Clark of Lockridge as interim co-lead counsel, and substitute Kevin Y. Teruya of Quinn Emanuel for Stephen A. Swedlow. Ms. Scarlett requests her continued appointment as interim co-lead counsel.

If the Court agrees that this request pursuant to Federal Rule of Civil Procedure 23(g) is improperly brought as an administrative motion pursuant to Civil Local Rule 7-11, Hagens Berman and Lockridge request that this Court order counsel to further confer and file an appropriately noticed motion pursuant to Civil Local Rule 7-1.

DATED: November 28, 2022

Respectfully submitted,

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<sup>3</sup> [https://www.dailyjournal.com/special\\_reports/429](https://www.dailyjournal.com/special_reports/429), last visited Nov. 27, 2022.

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 28, 2022, the foregoing document was transmitted to the Clerk's Office using the CM/ECF System, causing the document to be electronically served on all attorneys of record.

Dated: November 28, 2022

/s/ Shana E. Scarlett  
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